

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**MARION LEE SWEARINGIN, HARRY
DIETZ, LOTTIE MOORE, PAULINE HALL,
RAYMOND BEATSCH AND BONNIE
DALLMAN for themselves and others
Similarly situated,**

Plaintiffs

v.

NUTONE, INC.,

Defendant

**Case No. 1:05cv501
Judge Michael Barrett**

ORDER AND JUDGMENT

WHEREAS, a class action is pending before this Court entitled Marion Swearingin, Harry Dietz, Lottie Moore, Pauline Hall, Raymond Beatsch, Bonnie Dallman v. NuTone, Inc., Case No. 1:05cv0501 (the “Action”); and

WHEREAS, this Court on **July 10, 2008**, preliminarily approved the settlement of the Action reached between the Representative Plaintiffs, individually and on behalf of all Class Members as defined in the Stipulation of Settlement, and Defendant in accordance with a Stipulation of Settlement dated as of **June 9, 2008** (the “Stipulation”); and

WHEREAS, the Court having been informed that actual notice was sent via first-class mail to all Class Members in accordance with the terms of the Stipulation; and

WHEREAS, the Court on **September 26, 2008** held a Fairness Hearing to which members of the Settlement class, including any objectors and objections to the Settlement, were invited:

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order hereby incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. The Court finds that Notice to the Class required by Federal Rule of Civil Procedure 23(e)(1)(B) has been given in an adequate and sufficient manner, constituting the best notice practicable, complying in all respects with such Rules and due process, including, but not limited to, the forms of notice and the methods of identifying and giving notice to the Class.

3. The Court finds that the Representative Plaintiffs and Class Members are those so defined in the Stipulation. A list of such Representative Plaintiffs and Class Members is attached at **Exhibit 1**.

4. The Court finds that the proposed Settlement is the product of substantial, good faith, arm's length negotiations between the Parties and, considering the contributions made, releases given and other terms, is in all respects fair, just, adequate, reasonable and proper, and in the best interests of the Class.

5. The Court approves the Stipulation of Settlement in its entirety and incorporates it herein in its entirety including the plan of allocation of the Settlement Funds as described in the Stipulation of Settlement and all terms thereunder shall become enforceable as part of this Order. The Court specifically finds that the Settlement is within the range of potential recovery by the Plaintiffs, particularly in light of the various defenses asserted by Defendant, including that (1) prior UAW demands for benefit vesting were rejected, (2) UAW bargainers testified that when the benefit was initially negotiated desired vesting language was not obtained, (3) consistent, unequivocal language in Plan documents stated the benefits were not vested and could be terminated, (4) most Class Members signed acknowledgments that benefits could be terminated

or modified, (5) post-retirement benefits were linked to active employee benefits which permitted their modification and (6) elimination of the bargaining unit on August 31, 2006 also eliminated any health plan to which the Class may have been entitled.

6. The Parties shall comply with all of the terms of this Order and Judgment and the Stipulation, and shall undertake all acts and perform all obligations imposed under this Order and Judgment and the Stipulation as reasonably necessary to effectuate all of their terms.

7. The Representative Plaintiffs and Class Members shall, as of the date of payment by Defendants of the Settlement Fund, conclusively be deemed to have released and discharged the Released Claims as against the Released Persons.

8. The Released Claims shall be dismissed with prejudice on the merits as to the Released Persons and without an award of costs, and judgment dismissing the Released Claims against the Released Persons shall be entered and all Released Claims as to all Released Parties shall be extinguished at the time of payment by Defendant of the Settlement Fund.

9. The Court makes no award to Class Counsel from the Settlement Fund for costs of litigation and attorneys' fees from the Settlement Fund; provided, however, it does order reimbursement be made to Class Counsel for all reasonable out-of-pocket expenses incurred by Class Counsel to locate, retain and establish a Settlement Fund Administrator. The Court finds the work performed by Class Counsel in bringing this action and their efforts through Settlement has been on behalf and in the interests of the overall Class (including the Representative Plaintiffs) and has benefited the Class as a whole, and has not been on behalf of or in the interests of individual claimants.

10. The Court makes no award to the Representative Plaintiffs of any special compensatory payment from the Settlement Fund.

11. Each and every Representative Plaintiff and Class Member is permanently barred and enjoined, absolutely and forever, from suing upon or asserting, directly or indirectly, any and all of the Released Claims against Defendant and all other Released Persons.

12. Any Class Member identified in Exhibit 1, or the executor or personal representative of a deceased Class Member identified in Exhibit 1, who has not returned an executed Class Member Receipt, Acknowledgement of Settlement Proceeds and General Release of Claims, or who has otherwise failed to make a claim on the Settlement Fund within one (1) year of the date of this Order, shall be deemed to have waived all of his/her rights as a Class Member in this case and the settlement thereof, and he/she shall be forever barred from making a claim against the Settlement Fund, any other Class Member or Class Counsel. One (1) year from the date of this Order, any money remaining in the Settlement Fund shall be drawn upon by the Settlement Administrator, who shall pay such money equally to all other qualified Class Members as a second payment.

13. As of the date of payment by Defendant of the Settlement Fund, each of the Released Persons is discharged, dismissed and released from and with respect to all Released Claims.

14. If the conditions of the Settlement set forth in the Stipulation are not fulfilled, or the Settlement is terminated pursuant to its terms for any reason, then this Order and Judgment shall, upon further order of this Court, be rendered null and void and be vacated, and the Settlement and all orders entered in furtherance of the Settlement shall be rendered null and void.

15. The Court orders all parties, Class Members and counsel to refrain from the disclosure of the existence or terms of the Stipulation and this Order to the press or any media, to any legal publication or verdict or settlement reporting service and that if an inquiry is made by

any person regarding the contents of the Settlement of this Action, the Representative Plaintiffs, Class Members and counsel will state only that “the matter has been resolved to the satisfaction of the parties.”

16. The Court directs the entry of Judgment of dismissal with prejudice as to all the Released Claims and as to all Released Persons as of the Effective Date.

17. The Court, without in any way affecting the finality of this Order and Judgment, retains jurisdiction of the purposes of, among other things, all matters relating to consummation of the Settlement, and Settlement Fund disbursement, and resolving any disputes arising from or related to the foregoing.

/s/ Michael R. Barrett
United States District Judge

EXHIBIT 1

LIST OF CLASS MEMBERS

Allen,Bill	Foreman,Herbert C
Austin,Phyllis M	Fornash,Donald E
Baker,Floyd E	Francis,Donald L
Baker,Lee	Francis,Robert L
Baker,Ruben	Freese,Wilbur E
Ball, Wilma J	Gabbard,Dillard
Balser, Joseph	Gallagher, Wilma J
Barnes,Beverly A	Gallant,G Michael
Barney,Shelley R	Godbey,David
Bartlett,Ruth M	Godbey,Edward S
Beatsch,Raymond	Godbey,Virtrees S
Bennett, Alva	Goff,Vera F
Beverly,Annie M	Grant,Shirley L
Beverly,Thomas	Gray,Henry
Bolger, Andrew	Griffith,Charles E
Bolton,Vernia J	Guy,Doloris
Boner,Margaret	Hall,Don
Bowling,Susan	Hall,Pauline
Bowman,Irene	Harmon, Earnest
Brewer,Sarah	Heimbold,Roy A
Brown,Glenneth	Helton, Hetty F
Bunton,Donald E	Henry, Robert
Burchett,James Arnold	Hensley,Gladys
Caldwell,Donald	Holzer,Betty L.
Carter,Ethel	Howard,Robert
Caudill,Norma J	Hundley,Handsford
Clary,Ronald C	Hunley,Aline
Clift,Vera A	Jenkins,Robert
Cook,William H	Johnson,George
Cravens, Donald T	Johnson,Hershel
Creekmore,Jack	Johnson,Jerry L
Creekmore,Paul	Johnson,Samuel C
Dallman,Bruce H	Joslin,Donovan
Dallman, Bonnie	Kennedy,Dorothy P
Dameron, Robert	Kohus,Ronald L
Daugherty,Anna L	Leidecker,Don P
Davidson,Willie	Little, Charlene
Day,Reba M	Love,Betty J
Dean,Irona	Maloney,William C
Derossett,Madalyn Carol	Malott,James A
Derossett,Philip M	Marrs,Nancy C
Dick,Elmer A	Martin,Robert I
Dietz,Harry	Mason,Mary Ann
Doss,Robert R	McFarland,Everest
Eaton,Willard	McHenry, Nancy J
Edmonds,Donald R	McIntosh, Howard
Edmondson,Gloria M	McKinley,James R
Emberton, James	McKinley,Ralph
Engle,Delmar L	Meadors,Marvin
Fenton,Mary	Meece,Leslie O

Ferguson, Norma
Ferris, Christine L
Finley, Nickie D

Metcalf, Brooks
Meyers, Elmer
Montgomery, William R
Moore, Lottie

Mullins, Billy S
Mullins, Billy W
Nickum, Jack
Niece, Joe
Nolde, Richard J
Noonan, William J
Olson, Leroy
Parker, George R
Parker, Jessie J
Partin, James N
Partin, Ronald R
Parton, Jesse
Paul, Curley R
Peel, Verna M
Pence, David W
Pence, Thomas L
Pennington, Charles W
Perry, Otis Leroy
Perry, Robert E
Pilkerton, Billy W
Poe, Ronald L
Powell, Clyde
Price, George
Quarry, Violet M
Reno, Ellen
Riley, Justice
Riley, McKinley
Robinson, John R
Rogers, Jimmy
Ross, Charles E
Ross, Shirley
Rupe, Mary
Russell, Donald L
Russell, James E
Rybolt, James W
Schalk, Gerald L
Schmidt, Charles
Schulz, Alma Regina
Scott, Merdith
Segar, Eugene
Seymour, Ronald E
Sharp, Ronald
Sibert, Floyd L
Smith, Charles S
Smith, General Lee
Smith, Myrtle Janis
Smith, Wallace
Stacy, Betty Anne
Sunnycalb, James
Susshine, John F
Susshine, Joseph

Swearingen, Marion L
Taylor, Carol E
Thomas, Lowell C
Thomas, Nevil
Tipton, Chester
Vandergriff, Jack R
Vaught, Dorothy
Vaught, Ruby
Vinup, Dora J
Ward, Laraine A
Warf, James C
Webb, Goma
West, Herbert L
Whittington, Basil
Wilder, Jesse
Williams, Cless
Williams, Luther
Willis, Hattie M
Wilson, Clarence
Young, Paul L

